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Report of the Special Rapporteur in the field of cultural rights on her visit to Botswana

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, on her visit to Botswana from 14 to 26 November 2014, at the invitation of the Government.

The purpose of the visit was to identify, in a spirit of cooperation and constructive dialogue, good practices in, and possible obstacles to, the promotion and protection of cultural rights in Botswana. The Special Rapporteur addressed a number of key issues, in particular the rights of individuals and communities to participate in cultural life and to access, enjoy and have their cultural heritage recognized. The Special Rapporteur considered those matters with particular focus on government policies in the fields of culture, language, education, tourism and wildlife protection.

Botswana must be commended for its great efforts and achievements in the area of development and poverty reduction, in particular through important safety nets for vulnerable populations across the country. Efforts to include and enable people to benefit from the development processes have been rolled out in parallel with policies geared towards nation-building. While the use of Setswana as the national language has largely succeeded in enabling citizens to communicate with each other, the time is right for a second phase of nation-building that reflects, builds on and celebrates the rich cultural diversity of the country. There is need for national dialogue at various levels and with all stakeholders on the way forward. From a cultural rights-based perspective, that implies equal recognition and acknowledgement of the various communities in the country and of the diverse ways in which people relate to their environment and natural resources, as well as their land.

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Report of the Special Rapporteur in the field of cultural rights on her visit to Botswana*

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* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 19/6, the Special Rapporteur in the field of cultural rights, Farida Shaheed, conducted an official visit to Botswana from 14 to 26 November 2014, at the invitation of the Government. She visited Gaborone, Shixaxa, Maun, Ghanzi/Dkar, Old Xade, New Xade, Shakawe, Tsodilo Hills as well as several villages in the Okavango Delta and Ramotswa. The Special Rapporteur met with Government officials responsible for culture, education, tourism, protection of wildlife and land, at the national and district levels, as well as several Chiefs, including Paramount Chiefs. She also met with artists, academics, representatives of civil society and the Ombudsperson. She visited the Tlokweng Junior Secondary School where she met with the director, teachers and students. The Special Rapporteur thanks all those individuals and institutions for the wealth of information they shared with her. She also extends her thanks to the Office of the United Nations Resident Coordinator for its assistance.

2. The Special Rapporteur makes a number of recommendations with a view to assisting the Government and other relevant actors in their efforts to address the challenges in implementing cultural rights in Botswana. She thanks the Government for its constructive spirit and detailed responses to the report.

II. General context and framework

A. International framework

3. Botswana has not ratified the International Covenant on Economic, Social and Cultural Rights. It is a party, however, to treaties that contain significant provisions for the protection of cultural rights, such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child. Botswana is also a party to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Conventions concerning the Protection of the World Cultural and Natural Heritage and for the Safeguarding of the Intangible Cultural Heritage; however, it has not ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, although consultations are under way. In addition, Botswana is a party to the Convention on Biological Diversity.

4. Many of the country's reports to treaty bodies are seriously overdue. Botswana has not extended a standing invitation to the special procedures, however, it has received visits from several special procedure mandate holders. The Special Rapporteur encourages Botswana to enhance its cooperation with the United Nations human rights mechanisms.

B. Constitutional and legislative framework

5. The 1966 Constitution contains a chapter on the protection of fundamental rights and freedoms. While important freedoms relating to culture are included, such as the right to freedoms of conscience, expression, assembly and association, no direct reference is made to cultural rights, in particular the right to take part in cultural life, to engage in creative and artistic activities, to enjoy the arts or to share in scientific advancement and its benefits.

6. At the time of the Special Rapporteur's visit, efforts were under way to expand the mandate of the Ombudsperson to establish a hybrid institution encompassing the functions

of the Ombudsperson and of a national human rights institution. The Special Rapporteur noted the regrets expressed by some members of civil society with regard to the poor consultation process leading up to the decision to establish the institution and the lack of ownership that it may entail.

C. General context

7. The Special Rapporteur welcomes the efforts and achievements by Botswana in the area of development and poverty reduction, especially through important safety nets for vulnerable populations across the country, and its commitment to providing services in the areas of health, education and water to all. The country has managed to meet substantial challenges, although its population is scattered, including in some places with very low population densities. The State policy to bring essential services to villages and settlements with a minimum of 150 people is appreciated. The challenge is to avoid a significant proportion of the population becoming permanently dependent on welfare.

8. Botswana is home to many ethnic groups that fall primarily into five linguistic-tribal groups: Tswana, Basarwa, Bakgalagadi, Wayeyi and Hambukushu.[1] In addition, according to official estimates, there are some 28 languages in Botswana.[2]

9. The Tswana are comprised of eight subgroups — Bakgatla, Bakwena, Balete, Bangwaketse, Bangwato, Barolong, Batawana and Batlokwa — that use mutually intelligible dialects collectively known as Setswana. They are politically dominant in Botswana, as during colonization, the British powers negotiated primarily with the dominant Tswana tribes. The legacy of this prioritization of Tswana interests and culture over marginalized tribes persists in the social and political dynamics of Botswana,[3] influencing the realization of cultural rights in the country.

10. While it is generally considered that the Tswana are numerically dominant, some estimates contend that, taken together, non-Tswana groups represent the majority.[4] The last population census, in 2011, disaggregated language groups; however, it has been stressed that data collected through the questionnaire — which asked for language spoken at home and not for mother tongue — could not be relied upon to determine ethnicity. The 2011 census indicated that 77.3 per cent of the population spoke Setswana at home and that, while minority languages were widely used, their usage had declined by 2.6 per cent since the 2001 census. The dominance of minority language usage continues to be circumscribed in the districts of their origin.[5]

11. The Basarwa, also known as the San people, encompasses several groups estimated as comprising 50,000 to 60,000 people. They are usually referred to as the indigenous peoples of Southern Africa. While Botswana voted in favour of adopting the United Nations Declaration on the Rights of Indigenous Peoples, it does not recognize any particular indigenous people on its territory, based on the view that all groups in Botswana are indigenous to the country.

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[1] A/HRC/15/37/Add.2, para. 6.

[2] Botswana, Population and housing census 2011, Analytical report, p. 266.

[3] A/HRC/15/37/Add.2, para. 6.

[4] Lydia Nyati-Ramahobo, *Minority Tribes in Botswana: the Politics of Recognition* Briefing (Minority Rights Group International, December 2008), available at http://www.refworld.org/pdfid/496dc0c82.pdf.

[5] Botswana, Population and housing census 2011, Analytical report, pp. 266 and 274.

12. Efforts to include and enable people to benefit from the development processes have been rolled out in parallel with nation-building policies that some interlocuters, however, felt promoted assimilation into dominant tribes. More recently, Botswana has adopted measures towards a better recognition of cultural diversity. In particular, Vision 2016: A Long-term Vision for Botswana, adopted in 1997 after extensive national consultations and which constitutes a statement of long-term goals and related strategies, aims at building a united and proud nation with a diverse mix of cultures, languages, traditions and peoples sharing a common destiny.[6] That aim responds to the finding of the Presidential Task Group on a Long-term Vision for Botswana that the country had not yet succeeded in enlisting the social and cultural diversity of the country in a shared vision of the future.[7]

13. Botswana has adopted several good policies in that regard, including the 2001 National Policy on Culture. The Government has expanded the number of cultural activities — such as competitions — across the country and supports numerous festivals, including those of minority groups such as the San and the Hambukushu. Nevertheless, there is a need to provide more spaces for people, especially children, youth and artists, to engage in creative activities as well as sports, in both rural and urban centres.

14. Despite commendable efforts on the part of the Government, many people feel excluded from the main society and lack recognition of their cultural heritage and distinct ways of life, including their historical narratives. It seems that now is the time for a second phase of nation-building that reflects on, builds upon and celebrates the country's rich cultural diversity. An in-depth national dialogue at various levels with all stakeholders would help to determine the way forward. From a cultural rights-based perspective, this implies equal recognition and acknowledgement of the various communities in the country and of the diverse ways in which people relate to their environment, natural resources and land. The Special Rapporteur is confident that Botswana can address these challenges by relying on its strong tradition of consultation, democratic debate and freedom of expression.

III. Realizing cultural rights in Botswana: specific issues

15. Key cultural rights issues are currently the subject of considerable debates in Botswana.

A. System of governance, cultural rights and respect for cultural diversity

16. Botswana can be proud of its democratic tradition that is characterized by an open attitude which allows consultation and debate on major policy issues. As stated in Vision 2016, this encouragement of ideas and free thinking gives the country the opportunity to adapt to the modern world with a measure of consensus among its people.[8] *Therisanyo*, or "wide consultation", is a key planning principle. Consultations are organized through the *kgotla* system (traditional community meetings) as well as district and village development committees.

17. Botswana strives to maintain a delicate balance between customary law and common law in an effort to preserve its cultural heritage and to ensure development while seeking its own path. As stated in Vision 2016, the cooperative relationship between traditional leaders and elected political leaders is aimed at promoting social tranquility and

[6] See A/HRC/WG.6/3/BWA/1, paras. 118-119.
[7] Botswana, Vision 2016, Booklet (1997), p. 5.
[8] Ibid., p. 22.

orderly governance.[9] However, the balance seems to be constantly at the heart of internal debates and negotiations, and issues, in particular in terms of the rights of women and minority groups, are raised when power is granted to unelected leaders. Those issues need to be addressed in the light of article 25 of the International Covenant on Civil and Political Rights, in particular, with regard to protecting the right of everyone to take part in the conduct of public affairs, directly or through freely chosen representatives.

18. Botswana's system of governance and its impact on cultural rights and cultural diversity has been at the centre of discussions between the Government and the United Nations human rights mechanisms for more than a decade. Those issues relate in particular to the representation of non-Tswana tribes in the country's political and judicial institutions through the implementation of the constitutional provisions establishing the *Ntlo ya Dikgosi* (House of Chiefs), which was reformed in 2005.

1. The *kgotla* system and customary courts

19. The Government has expressed its commitment to a system of political participation that is equally accessible to all and to ensure consultation with local communities in relation to decisions affecting them. There are indications, however, that existing mechanisms remain inadequate with regard to non-dominant groups. Botswana acknowledges that one challenge is to review laws and practices that are inconsistent with the full enjoyment of constitutional rights and international standards, and that the dual system comprising customary law and common law must be regularly reviewed to remove contradictions and inconsistencies.[10]

20. Governance at the level of local tribal and indigenous communities is ensured by the *dikgosi* (traditional chiefs), who may be considered as royal traditional leaders, as most positions are inherited, and through the *kgotla* system, which has its origins in Tswana customs and is recognized and regulated by the Bogosi Act. The *kgotla* is the meeting place for dispute resolution as well as for discussions regarding community matters, including development initiatives.[11]

21. All courts may administer customary law, including customary courts developed in connection with the *kgotla* system and operating under the authority of chiefs or headmen. Customary courts deal with criminal and civil cases of limited extent, with possible appeals to the Customary Court of Appeal and then the High Court.[12] Under the Customary Law Act 1969, tribal customary law is valid to the extent that it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice.

22. The *kgotla* system is an important institution for consultations at the local level and has enabled communities to remain the guardians of their cultural heritage. The Special Rapporteur attended a *kgotla* meeting in Ramotswa, where events and discussions with persons with disabilities, including children, were held. That demonstrates the capacity of the *kgotla* system to address the needs of marginalized groups.

23. The Special Rapporteur notes, however, that such institutions of local governance and adjudication fail to adequately accommodate the cultural patterns and traditional leadership structures of non-Tswana peoples, such as the Basarwa, who are traditionally organized around a system of clans and elders.[13] In some parts of the country, such as in

[9] Ibid., p. 12.
[10] Ibid., p. 22.
[11] See Botswana, Bogosi Act, art. 2(1) and A/HRC/15/37/Add.2, para. 50.
[12] A/HRC/15/37/Add.2, para. 13.
[13] Ibid., para. 50.

remote villages in the Okavango Delta, members of Herero, Hambukushu or San communities do not feel sufficiently confident to address an assembly in Setswana, fearing that they may not be understood or that they may be misunderstood.

24. The Special Rapporteur is particularly concerned that the adjudication system in which judgement is handed down by a *kgosi* (traditional chief) leads to the imposition of the customary law of the dominant tribe in civil matters within a given tribal territory. While welcoming the fact that adjudication by customary courts in criminal matters are to be based on the Penal Code, the Special Rapporteur is concerned that traditional chiefs or the tribal administration are not required to have any particular training in that respect. She notes, however, that training is being developed in that area. The system of arbitration by headmen reportedly resolves about 80 per cent of cases at the ward level, but no records are maintained, which precludes the possibility of review by the administration. Moreover, the lack of records deprives the authorities of a useful source of information about developments and issues arising at the community level. In that respect, the Special Rapporteur welcomes the plan to introduce small claims courts that are based on common law in urban centres, which would bring justice closer to the people.

25. The participation of young people and women is often an issue in customary structures, which mostly elders attend, as it is difficult for working people to attend during weekdays. The Special Rapporteur was pleased to learn that some women act as Paramount Chiefs, however, that is clearly not sufficient to ensure the cultural rights of women on an equal basis with men.

2. Composition of the House of Chiefs, the Bogosi Act and the Tribal Territories Act

26. The *Ntlo ya Dikgosi* (House of Chiefs) is an advisory body to the Parliament of Botswana, that is consulted on all bills affecting tribal organization or property, organization, administration and powers of customary courts, as well as customary law.[14] The composition of the *Ntlo ya Dikgosi* is regulated by sections 77, 78 and 79 of the Constitution.

27. Prior to 2007, the *Ntlo ya Dikgosi* consisted of 15 members: the Paramount Chiefs of the eight Tswana tribes as ex officio members, while all the other tribes or groups competed for the remaining seven seats through elections. Those constitutional provisions were complemented by the provisions of the 1933 Chieftainship Act, which defined "chief" and "tribe" with reference to the eight Tswana tribes only, and the 1933 Tribal Territories Act, which divided the tribal land for communal use into eight tribal territories named after the eight Tswana tribes.[15]

28. In 1999, one of the minority tribes, the Wayeyi, challenged the constitutionality of sections 77 to 79 of the Constitution, the Chieftainship Act and the Tribal Territories Act before the High Court, on the basis of sections 3 and 15 of the Constitution regarding fundamental rights and freedoms and non-discrimination.

29. In 2001, the High Court ordered the amendment of section 2 of the Chieftainship Act to address the alleged discrimination and afford equal protection and treatment to all tribes under the Act. The Court added that if other laws had to be amended to accord the applicants their rights, necessary action should be taken. The Court dismissed the challenges regarding sections 77 to 79 of the Constitution (arguing that one part of the Constitution cannot be made invalid by another part of the Constitution) and the Tribal Territories Act (on the ground that the Act, which was in force before the Constitution was

[14] Constitution of Botswana, sect. 88 (2).

[15] See A/HRC/15/37/Add.2, paras. 40-44.

adopted and continued to exist thereafter, was covered by the exception to the principle of non-discrimination enshrined in section 15 (9) (a) of the Constitution).[16] The Special Rapporteur notes in that respect that such exception to the principle of non-discrimination cannot be considered as valid under international human rights standards, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, to which Botswana is a party.[17]

30. In 2000, the President of Botswana appointed the Balopi Commission to conduct an inquiry into sections 77, 78 and 79 of the Constitution. The Commission concluded that the sections were indeed discriminatory and should be amended to make them tribally neutral.[18] Following vivid debates, the provisions governing the composition of the *Ntlo ya Dikgosi* were amended in 2007; the number of seats was increased from 15 to 33 or 35, thereby enabling better representation of all the tribes (in particular, 20 or 22 seats are filled through selection by the regional electoral colleges and the President appoints the members to the five remaining seats). Under the previous provisions, eight ex officio members were persons performing the functions of Chief in respect of the eight Tswana tribes. Under the current system, persons holding the office of *Kgosi* (Chief) in the eight tribal territories are appointed to the *Ntlo ya Dikgosi* according to the established norms and practices of those territories.[19]

31. Therefore, the basis for representation in the *Ntlo ya Dikgosi* changed from tribal affiliation to territorial location, in particular through the regional electoral colleges for some groups. There is concern, however, that the change is cosmetic in several aspects; in particular, it is alleged that the eight Tswana tribes are still ensured representation by their own Chiefs, as they rule over their own tribal territory. In addition, according to section 78 (4) of the Constitution, regional electoral colleges shall be composed of paid *dikgosana* (sub-chiefs or headmen) from the respective region. However, it is alleged that, in some cases, Wayeyi and San communities have had difficulties obtaining recognition by the Government and payment to some of their village headmen, on the basis that the approval of the Tswana Chief ruling the region was required. Another issue brought to the attention of the Special Rapporteur was that because the *dikgosana* are employees of the tribal administration, they are under pressure to follow guidelines from the Tswana Chiefs, out of fear of losing their position and salary. Furthermore, it is alleged that about 20 tribal communities, including large ones, do not have any representatives at all in the *Ntlo ya Dikgosi*.

32. United Nations mechanisms, such as the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Special Rapporteur on the rights of indigenous peoples, have expressed concern that the amendments reproduce the discriminatory rules.[20] In particular, it has been stressed that the amendments do not provide for each tribe or tribal community to be represented by its own Chief and that members of the *Ntlo ya Dikgosi* are selected by geographic region and presidential appointment through a complex system that ensures representation by a number of Tswana Chiefs; however,

[16] High Court of Botswana, *Kamanakao and Others v. Attorney-General* (2001), paras. 40, 54 and 63. The Tribal Territories Act was first enacted as Proclamation 1899 and continually amended and re-enacted, the last replacement law being Proclamation 45 of 1933.

[17] See CERD/C/BWA/CO/16, para. 8.

[18] A/HRC/WG.6/3/BWA/1, para. 53.

[19] See also www.parliament.gov.bw/ntlo-ya-dikgosi-introduction.

[20] CERD/C/BWA/CO/16, para. 10; CCPR/BWA/CO/1, para. 24; A/HRC/15/37/Add.2, para. 51.

non-dominant groups are not likewise ensured that their Chiefs will be included in the *Ntlo ya Dikgosi*.[21]

33. While recognizing that the constitutional amendments are a step in the right direction, the Special Rapporteur concurs with the above-mentioned human rights mechanisms and expresses concern that, overall, the amendments have not sufficently addressed the underlying discrimination inherent in the legislation and in the social dynamics at the community level. The Constitution still allows preferred status for the Tswana tribes and the de facto automatic appointment of their Chiefs in the *Ntlo ya Dikgosi*.

34. In 2008, the Chieftainship Act was replaced by the Bogosi Act, which enables the recognition of tribes other than the eight Tswana tribes, provided that the relevant Minister, after consulting the tribal community concerned in its *kgotla*, recognizes that community as a tribe (see sections 2 and 3 of the Act). The Special Rapporteur considers this a positive step. Reference to the *kgotla* as the tribal decision-making body may not be adequate, however, as the *kgotla* system is typically Tswana and unfamiliar to many non-Tswana tribes. The Special Rapporteur also notes the discretionary powers granted to the Minister, who, in deciding whether a tribal community may be recognized as a tribe, "shall take into account the history, origins, and organizational structure of the community and any other relevant matters". It is significant that, to date, no tribal community has been recognized as a "tribe" by virtue of the Bogosi Act. The Wayeyi applied for recognition as a tribe in 2008; they were consulted by three different Ministers in 2009, 2013 and 2014 respectively, and are still awaiting a decision. On various occasions, they were informed that consultations with "relevant stakeholders" were still under way and it has been indicated that other tribes were also being considered in order to make the recognition exercise holistic.[22] The Specail Rapporteur raised this issue with the authorities, but did not receive any satisfactory explanation or information.

B. Linguistic rights and policies and cultural diversity within the education system

35. In Botswana, English is the official language. Setswana, which is largely spoken by the population across community affiliations, is the national language used in public life. Minority languages are not recognized and do not enjoy any specific status.

36. The language policy has been criticized by minority tribes or groups as well as by human rights monitoring bodies, in particular with regard to the status of minority languages in education curricula as either a language of instruction or a subject. In the Botswana education system, Setswana is the language of instruction in the first grade; English is the language of instruction as of second grade and Setswana is a compulsory subject. When the Revised National Policy on Education was adopted in 1994, the National Commission on Education proposed introducing minority languages in the curriculum, however, without success. The recommendation that preschool children be taught in the dominant language of the area in which the school is location was deferred, as was the recommendation that schools should make arrangments to teach other languages as a co-curricular activity where requested by parents. The recommendations were rejected on the grounds that such steps would contradict the language policy and that there was a lack of capacity. Furthermore, the recommendation that preschool children be taught in the

[21] A/HRC/15/37/Add.2, para. 51.

[22] See, for example, the answers to parliamentary questions No. 23 raised on 25 November 2011; No. 965(4) raised on 19 July 2012; and No. 1156 (14) raised on 16 August 2012.

dominant language of the area in which the school is located was not considered because the related recommendation to establish preschool education was not accepted.

37. Since then, Botswana has made a commitment, at the national level as well as in its interactions with United Nations mechanisms, to better reflect minority languages in the education system. However, there have been many hesitations and contradictions, reflecting fierce internal debates.[23]

38. Adopted in 1997, Vision 2016: A Long-term Vision for Botswana contains important commitments pertaining to cultural rights, including linguistic rights and the right to education. In particular, it is stated that "Botswana's wealth of different languages and cultural traditions will be recognized, supported and strengthened within the education system. No Motswana will be disadvantaged in the education system as a result of a mother tongue that differs from the country's two official languages" (which, as the Special Rapporteur understands, refers to English and Setswana). Vision 2016 further stresses that no citizen will be disadvantaged as a result of, inter alia, language and that, by 2016, the country will still possess a diverse mix of cultures, languages, traditions and peoples sharing a common destiny, that it will harness that diversity and achieve ethnic integration and full partnership to create a nation in harmony with itself.[24] More particularly, Vision 2016 states that all of the nation's languages must be taught to a high standard at the primary, secondary and tertiary levels.[25] However, in assessing its progress, Vision 2016 noted that its expectation of embracing other languages in the educational system remained a major challenge.[26]

39. Following the first cycle of the universal periodic review in 2009, Botswana accepted the recommendation to pursue a policy of mother-tongue language education in conjunction with the national languages, Setswana and English.[27] In its national report for the second cycle of the review in 2012, the Government stated, in follow-up to the said recommendation, that it appreciated the importance of using mother tongues for early schooling and that it was exploring different strategies to accommodate mother tongue education in the education system, including by introducing teacher aides at the primary school level.[28] The Special Rapporteur was informed that such teacher aides have been successfully introduced in Ghanzi, where a significant part of the population is Basarwa, as well as elsewhere to deal specifically with mother tongue difficulties. She noted with great interest that, thanks to a Government-led pilot project, preschool education was offered in four schools in the Ghanzi district, but she was unsure as to whether that included mother tongue education.

40. While appreciating such progress, the Special Rapporteur recalls that using the mother tongue in the initial years of learning significantly increases the quality of education as it allows children to learn and develop life skills as well as self-esteem. She joins the Special Rapporteur on the right to education who, following his visit to Botswana in 2006, was convinced of the negative impact on students of the brutal shift from using their mother tongue at home to being taught in another language at primary school and of its negative consequences for the learning process.[29] She considers that the current system

[23] See Parliamentary debate of 26 April 2013 on the motion "Government to make education more inclusive".

[24] See Botswana, *Vision 2016* booklet (1997), pp. 7 and 12; and A/HRC/WG.6/3/BWA/1, para. 120.

[25] See Botswana, *Vision 2016* booklet (1997), p. 26.

[26] See Vision 2016 website at www.vision2016.co.bw, Status at a glance across all pillars by key result areas, pillar 1.

[27] A/HRC/10/69/Add.1, p. 6, recommendation 18.

[28] See A/HRC/WG.6/15/BWA/1, para. 62.

[29] E/CN.4/2006/45/Add.1, para. 67.

disadvantages children in remote areas, who have no or minimal exposure to Setswana in their families and communities. This is especially the case of pupils residing in hostels.

41. While welcoming the introduction of teacher aides, the Special Rapporteur does not believe that it will ensure linguistic and cultural rights within the education system. She considers it important for the cognitive development of the child to be taught in his or her mother tongue and to see that his or her culture and history are acknowledged as an integral part of the culture and history of the country as a whole. The Special Rapporteur recalls that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that, wherever possible, minorities should be provided with opportunities to learn or to have instruction in their mother tongue (art. 4, para. 3) and that denying minorities the possibility of learning their own language, receiving instruction in their own language, or excluding from their education the transmission of knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity.[30]

42. In Botswana, culture and cultural diversity are to be integrated in education through cultural and social studies and extracurricular activities. Nonetheless, stakeholders reported that most programmes are relevant for Tswana communities only. The Special Rapporteur also heard concurring testimonies that teachers wishing to organize extracurricular events in the language and culture of minority tribes are seen as promoting tribalism. Although many of the testimonies referred to events that took place in the past, sometimes decades ago, they reveal a context in which people feel that it is not possible to promote multiculturalism and interculturalism in schools, whether or not that is true.

43. In that regard, it is important to highlight Botswana's excellent 2001 National Policy on Culture. Unfortunately, few people seem to know about this policy. The policy states that "it is through language that culture is communicated to future generations." The Special Rapporteur is happy to see that, in some districts, such as Ghanzi, the local administration acknowledges the importance of local languages and has started publishing? multilingual newsletters. However, several key provisions of the policy remain largely unimplemented, such as those relating to the documentation and further development and use of languages, acceptance of and respect for other cultures as integral parts of the national stream, and reorientation of cultural practices and values to achieve a society that is culturally supportive of the rights and status of women. Some communities have also requested the establishment of community radio stations in minority languages in various parts of the country.

C. Tourism, world heritage sites, wildlife protection and cultural rights

44. Conflicts relating to land use are numerous in Botswana, with various competing needs, uses and interests at stake, which also imply different world visions: commercial and traditional farming, hunting, tourism, wildlife management, mining and urbanization, in particular. Vision 2016 aims to reduce poverty sufficiently to create a situation where no one is forced to damage the environment for their basic needs and where wildlife is managed for the sustainable benefit of the local communities and the interests of the environment as a whole.[31]

45. In most of the Special Rapporteur's meetings, the issue of land was a recurring theme. Many complained about the opacity of the land allocation process that is conducted

[30] See E/CN.4/Sub.2/AC.5/2005/2, para. 28; and A/HRC/22/49, para. 48.

[31] Boiswana, *Vision 2016* booklet, p. 8.

by the land boards and alleged that they were being discriminated against, while tourism companies are privileged. Some communities, such as the Wayeyi with whom she met in Shixaxa, also alleged that they had no ownership certificate nor security of tenure and were under the threat of forced eviction. They further alleged that they were not authorized to build new houses and that some of their houses had been destroyed by the authorities.

46. After consulting government representatives and stakeholders on those matters, the Special Rapporteur came to the conclusion that there is clearly a lack of understanding on the part of many people of the legal framework in place, of their rights, as well as of the procedures to be followed, including by those who have settled on self-allocated land for years. Massive information campaigns should be conducted to explain available options, including by proactively engaging with communities, taking into consideration their fear of being relocated far away from their source of livelihood (for example, a river) and their perception that their fate is considered less important than the economic interests of tourism companies, for example.

47. The Special Rapporteur visited areas where other land-related conflicts arise or have arisen, namely, the Okavango Delta and Tsodillo Hills, both listed as UNESCO World Heritage Sites. Both these areas are San ancestral territories, where other peoples of Botswana live and work. Those areas are important for various environmental and economical reasons, as well as for their crucial significance in terms of cultural heritage. Visiting them offered the Special Rapporteur an opportunity to learn more about the growing concerns worldwide regarding the rights of local communities and peoples within the processes of nomination and inscription on the UNESCO World Heritage list,[32] and to have a closer look at the practices developed in Botswana, which seems open to new models of governance and management in this regard. The Special Rapporteur also visited the Central Kalahari Game Reserve, another area experiencing land-related conflicts.

48. The Special Rapporteur stresses the following: first, the Government of Botswana generally demonstrates its willingness to support and assist people who are forced into an economic transition for various reasons; second, communities are willing to develop economically, but are not always ready to follow the Government's model, preferring instead to seek alternatives that they feel would enable to them to better reconcile economic development and preservation of their specific ways of life and world visions; third, while acknowledging that the Government has deployed many measures to communicate with them, relevant communities still have great difficulties in understanding the policies in place as well as future plans, which gives rise to misunderstandings and suspicions; fourth, the legacy of past injustices needs to be acknowledged and addressed. In many of the places she visited, the Special Rapporteur heard the frustration, anger and fears expressed by people, in particular the San, the Hambukushu and the Wayeyi, sometimes about events that took place decades ago. No society can go forward without addressing such legacies.

49. The Special Rapporteur welcomes the adoption of policies aimed at giving powers to communities with regard to resource management, in particular through the Community-Based Natural Resource Management (CBNRM) programme. Adopted in 1989, community-based natural resource management is an approach to conservation and development that recognizes the rights of local people to manage and benefit from the use of the natural resources of their land. It entails transferring the rights of access and resource use back to communities. It also seeks to empower communities through, in particular, devolved management responsibility in order to build their capacity and to create

[32] A/HRC/17/38.

partnerships with public- and private-sector actors to develop programmes for the sustainable use of a variety of natural resources.[33]

50. The policy of the Government is to ensure the economic transition of local communities through their participation in tourism activities, away from hunting and harvesting activities, which are considered as mainly detrimental to the environment, in particular in national parks. There are still important challenges remaining, however, to make those schemes a reality; the Special Rapporteur heard many accounts that local people still lack the capacity to seriously engage in the tourism industry.

51. In 2014, a national hunting ban was put into place for the whole territory of Botswana to enable the fauna to reproduce to acceptable levels and to design more tailor-made policies in the future. Some consider, however, that the motivation for the hunting ban is to pave the way for tourism and tourist trophy hunting, without any due consideration given to the cultural rights of local populations. According to some observers, there is no scientific evidence that hunting in Botswana is detrimental to wildlife conservation and photographic companies simply force their values and belief systems onto resource management in Botswana. Many people believe that, when used wisely, hunting can be a management/conservation tool: for example, hunting through community-based natural resource management could be used to control the ever-increasing elephant population.[34]

52. Various interlocutors, including from local communities, acknowledged the need for some kind of control of hunting and harvesting practices, stating, for example, that some people overharvest at inappropriate times. Communities, especially the San, stress the importance of confidence-building measures to improve relationships between communities and the government departments responsible for protecting the fauna and the flora for the common interest of all. Practices at stake include harvesting — including of medicinal plants —, fishing and hunting, fire control and firewood techniques, and knowledge of specific resources in the forests. It is important to emphasize the cultural dimension of hunting and tracking practices by which people learn about their traditional territories, animal ecology, biosystems and the relationship between existences, and develop medicinal knowledge, conservation techniques and the skills used to maintain the environment, the fauna and the flora.

53. Another point of frustation for many people relates to the cohabitation with wildlife, in particular elephants, whose population is said to have grown to a point that is unsustainable and which cause damage to crops and villages. They also reported difficulties in obtaining compensation for such losses and feel that the animals are better protected than they themselves. Some people request authorization to trophy hunt elephants as a way of managing the elephant population, participating in the tourism economy and creating income.

1. Tsodilo Hills

54. Tsodilo Hills have been on the UNESCO list as a cultural World Heritage Site since 2001. The hills are home to two communities who live in neighbouring villages: the Ju|'hoansi San (about 50 people) and the Hambukushu (about 160 people).

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[33] Botswana, Ministry of Environment, Wildlife and Tourism, *Community-based Natural Resources Managment in Botswana*, Practitioners' Manual (2010), p. iv.

[34] "The future of CBNRM in a changing environment", Proceedings of the Fifth National Community-based Natural Resource Management Conference, held in February 2010, p. 19.

55. The Government of Botswana has put in place many tools for developing community-based initiatives to ensure that the local people participate in the management and enjoy the benefits of their local natural and cultural resources. A local non-governmental organization (NGO), TOCADI, has managed the site for some years. At the time of the Special Rapporteur's visit, TOCADI was gradually phasing out to transfer the site management to the Tsodilo Trust, a community trust, which had already started generating income. Although the site is locked at night for security reasons, special arrangements have been made for the local people, including from surrounding areas, to enter and perform rituals.

56. Grievances were expressed by local communities about the way in which they had been relocated outside of the site in the past, the way they benefit from the tourism industry and the inscription of the site on the UNESCO World Heritage list. Reportedly, the San were displaced from the hills in the period from 1994 to 1997 after a management plan was developed for the area with the Ju|'hoansi village falling into the core zone to be free from permanent human habitation. Some San believe that they were removed because they were perceived as easy to relocate. According to them, they were relocated because their cows were a problem to the Government's desire to develop an airstrip to facilitate tourist visits. The airstrip was located between the feeding grounds of the cattle and the water borehole. They stated that there was no adequate consultation and that they were pressured to move out in a short time frame and that there was no appropriate compensation for their relocation. Following the removal of the village, the site museum and staff dwellings were built close to the original site of the Ju|'hoansi village in the core zone.[15] Today, discussions are under way to set up a cultural village for tourists where the Ju|'hoansi village stood. In that regard, the San have expressed concern about what would happen to the graves of their ancestors that are still there. The Special Rapporteur encourages the Government to enter into thorough discussions with both communities as to where the cultural village should be located.

57. Many people with whom the Special Rapporteur met were hopeful of the benefits that the listing could give them, but regret that the development of the skills and livelihood capacities of the community remains insufficient, despite promises from the Government. They feel disempowered as they lack the knowledge of how to benefit from the tourism industry and, for example, how to market their craft.

58. There are signs that the relationship between the San and Hambukushu communities might not be smooth. The Special Rapporteur heard grievances that the Hambukushu community was priviledged in several ways and held more power, in particular through the *kgotla*. According to information received, the San settlement does not receive the same level of infrastructural support from the Government, and the San are not always properly informed beforehand about visits by government representatives or properly consulted and invited in a timely manner to participate in the election of members of the Village Development Community (it was only after they had complained that three San representatives were integrated into the Community). While noting that the San have not formally complained to the Government about those issues, the Special Rapporteur hereby brings the matter to the attention of the Government and invites it to look into it. She stresses that some San believe that the Tsodilo Trust has helped to rebalance the decision-making process and is helping to reduce the mistrust between the two communities.

[15] See Michael Taylor, "'We are not taken as people': Ignoring the indigenous identities and history of Tsodilo Hills World Heritage Site, Botswana", in *World Heritage Sites and Indigenous Peoples' Rights*, Stefan Disko and Helen Tugendhat, eds. (Copenhagen, International Work Group for Indigenous Affairs, 2014), pp. 119-129.

2. Okavango Delta

59. The Okavango Delta has been on the UNESCO list as a natural World Heritage Site since June 2014, representing a great success for Botswana. The site is well-known for its beauty and biodiversity, but less-known for the peoples who have lived there for thousands of years, interacting with the environment and building their cultural practices and world visions in relation to it. The delta supports the livelihood of thousands of people by providing freshwater, food, building materials, medicinal plants and employment through the tourism industry.[36] The anticipated effects of the listing include a long-term strategy for the conservation of the biodiversity of the delta as well as a new opportunity for the San peoples to share in the duties of conservation and the benefits of sustainable tourism and natural resource use.[37]

60. Five ethnic groups inhabit the Okavango Delta, each with its own language and identity. These are the Bugakwe, the ǂAnikhwe (San indigenous peoples), the Dxeriku, the Hambukushu and the Wayeyi (Bantu peoples). All face serious challenges which impact on their well-being and the sustainability of their cultures. In particular, the shift from a traditional market economy to a cash market economy requires a change in livelihood systems, which many resist. Many people face poverty and discrimination, particularly during the transition period.

61. The inscription on the UNESCO list was supported by the majority of the local communities living in and around the delta. The Special Rapporteur welcomes, in this regard, the Government's efforts to conduct a series of consultations with the communities concerned prior to the submission of the nomination dossier. She stresses, however, that some of the people with whom she met had expressed the view that the consultation process was confusing and not appropriate, and that only leaders were consulted, not the people.

62. In order for the delta to be considered for nomination, and thanks to the work, in particular, of the International Union for the Conservation of Nature (IUCN),[38] the Indigenous Peoples of Africa Coordinating Committee (IPACC), as well as local NGOs such as the Kuru Family of Organizations (KFO) and San activists, Botswana was required to provide detailed information about the cultural heritage and user access rights of the San peoples. Key additional information included in the nomination dossier recognized that the Delta has been inhabited for centuries by indigenous peoples, including the Khwe (Bugakwe and ǂAnikhwe) and that these peoples have a special relationship with their land (forests and the Delta) and attach high social, spiritual and cultural significance to it. The nomination dossier acknowledged the land uses by the Khwe peoples, including the performance of rituals, hunting, tracking and gathering practices, conservation techniques and skills used to maintain the fauna and the flora. It also provided some key cultural landmarks of the San, including ancestral graves, spiritual and sacred sites, and sites of historical importance.[39]

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[36] See International Union for Conservation of Nature (IUCN), "Iconic Okavango Delta becomes 1,000th World Heritage Site", news release, 22 June 2014, available at www.iucn.org/?16018/Iconic-Okavango-Delta-Becomes-1000th-World-Heritage-site.

[37] See Open Society Initiative for Southern Africa, "Botswana accepts San as indigenous to the Okavango Delta", 25 June 2014, available at www.osisa.org/indigenous-peoples/Botswana/Botswana-accepts-san-indigenous-okavango-delta.

[38] See Botswana, Okavanga Delta World Heritage Nomination Dossier, annex, IUCN letter, 13 December 2013.

[39] See Botswana, Okavanga Delta World Heritage Nomination Dossier, annex, Supplementary information, January 2014.

63. Nonetheless, the nomination of the delta has created mixed feelings. On the one hand, the communities concerned fear an accelerated trend towards the loss of their culture and are worried that their traditional livelihood activities might be restricted, particularly in the core zone. This is exacerbated by suspicion and mistrust of the Government, as well as misunderstandings and disagreements regarding some government decisions, such as hunting bans and fishing and harvesting regulations. Furthermore, there are rumors about the possible fencing off of the area and eviction of communities. There are also uncertainties as to how the site will be managed and the consequences of the listing on access to delta-based sources of livelihood and to sites of cultural and historical significance. Some people stressed that they "had the feeling" that they would not be able to access some specific sites in the delta.

64. At the same time, there is hope that new opportunities will open up for communities to participate in the management of the area and use their specific knowledge to maintain the biodiversity of the area and their cultural heritage. San leaders in particular have repeatedly emphasized that they wish to be actively involved in the decision-making and management of the site.

65. During her visit, the Special Rapporteur was pleased to receive the Government's assurances that there will be no fencing off of the area, nor eviction of local communities, nor disruption of their rights of access to natural resources. She was also pleased to be informed, after her visit, that consultations were ongoing through, for example, a multi-stakeholders community consultative conference held in Maun in March 2015.

3. Central Kalahari Game Reserve

66. The Central Kalahari Game Reserve was established in 1961 to protect the wildlife and to serve as a place of sanctuary for the San peoples, where they could live their traditional hunter/gatherer way of life.[40] The lifestyle of those communities of approximately 3,000 to 4,000 people was then considered as consistent with the preservation of wildlife in the game reserve. Over time and with the support of the Government, the communities developed an agro-pastoralist lifestyle and kept some livestock within the reserve.[41]

67. The reserve has been at the centre of considerable controversy since the Government's decision, in 1985, to relocate all the residents to settlements outside the reserve. The reasons were that the lifestyles of the communities were no longer consistent with the objectives of the reserve and that maintaining services within the reserve were cost-prohibitive. Some residents, convinced by the Government's scheme for development outside the reserve, in particular in New Xade, moved out voluntarily in the 1990s. However, the consultation process was inadequate and many residents were unwilling to relocate.[42]

68. The forced relocation of the remaining population in 2002, following the closure of all the services by the Government, resulted in a certain number of residents approaching the High Court to claim their right to continue to live on their land. In 2006, the Court ruled that the eviction was unlawful and unconstitutional, while not condemning the termination of basic services.[43] It also ruled that it was unlawful and unconstitutional for the

[40] See Botswana Tourism, Central Kalahari Game Reserve, available at www.botswanatourism.co.bw/destination/central-kalahari-game-reserve.

[41] A/HRC/15/37/Add.2, chap. V.

[42] Ibid., para. 66.

[43] See High Court of Botswana, *Roy Sesana and Others* v. *The Attorney General*, Misca. No. 52/2002, judgement of 13 December 2006,para. 55.7.

Government to refuse to issue special game licences to indigenous peoples in the reserve.[44] Another judicial victory for the residents of the reserve was the January 2011 decision of the Court of Appeal that the applicants in the case did not need Government authorization to use the water at the Mothomelo borehole and that they could re-open the borehole and open new wells in the vicinity.

69. For a decade, various United Nations human rights bodies have expressed concern about the Government's lack of implementation of the judgement in the *Sesana* case, as the Government only allowed the 243 applicants and their family members to return to the reserve without the need for a re-entry permit, while those who lived in the reserve at the time of relocation, but who were not applicants in the case had to obtain temporary one-month entry permits.[45] Today, concerns persist regarding the restrictive interpretation of the right of offspring to remain on the reserve upon attaining majority at 18 years of age. There are fears that once the elders have passed away, nobody will be entitled to live in the reserve. The Special Rapporteur was informed by government representatives that permits were not difficult to obtain and that they are issued to monitor the number of people in the reserve. People who have been sentenced for poaching may also be stopped at the gate. However, it seems that the fears have been expressed by people who do not understand the policy imposed, and who consider it another overly restrictive interpretation of the High Court decision. In general, it is difficult to understand why such regressive measures have been adopted towards the San, who represent small numbers of people in a huge area and who previously had their settlement, school and waterholes within the reserve.

70. The Special Rapporteur on the rights of indigenous peoples, in particular, recommended that the Government facilitate the return of all those who were removed from the reserve who wish to return and to allow them to engage in subsistence hunting and gathering in accordance with traditional practices, as well as to provide them with the same government services available to people of Botswana elsewhere in the country, including most immediately, access to water.[46] He sent a letter to the Government expressing his concern about allegations that residents in the Reserve had been criminally prosecuted, arrested, harassed, beaten and intimidated by the police and park officials for engaging in their traditional subsistence hunting and gathering activities.[47] During her visit, the Special Rapporteur heard allegations of further occurrences of torture and ill-treatment of visiting family members in the reserve, as recently as 2014.

71. The residents, estimated at about 260, in the reserve wish to continue their own cultural practices and ways of life. As the residents in the reserve boycotted the 2001 census, some people believe that about 500 people currently live in the reserve. The Special Rapporteur noted that a Governmental programme provides transportation to children from the settlements to a boarding school outside the reserve.

72. Following the 2006 High Court decision in the *Sesana* case, the Government undertook a commitment to negotiate with the residents of the reserve, in consultation with all stakeholders. On 12 June 2008, a delegation, led by Roy Sesana, met the President of Botswana. That meeting resulted in the creation of a negotiating team consisting of

[44] Ibid., para. 55.5 and .6.

[45] See A/HRC/15/37/Add.2, chap. V; and CERD/C/BWA/CO/16, para. 12.

[46] See A/HRC/15/37/Add.2, para. 97.

[47] See Letter from the Special Rapporteur on the rights of indigenous peoples to the Permanent Mission of Botswana, dated 12 February 2013 (AL Indigenous (2001-8) BWA 1/2013).

government and reserve representatives, facilitated by an NGO Coalition, with a view to finding an amicable solution to the reserve situation.[48]

73. Unfortunately, the process stalled. One main disagreement concerns the issue of hunting within the reserve; the Government's position is that, as the reserve is a protected area, no hunting is permitted therein. Furthermore, a temporary general hunting ban was introduced in Botswana in 2014. Another issue requiring clarification relates to the possibility for residents to harvest veldt products in the reserve. While the Government confirmed that there were no restrictions on that matter,[49] some San members stated that this was not the case and that they could not gather medicinal plants and therefore could not practice their traditional medecines anymore. Overall, the San are deeply worried that such bans will lead to irreparable losses of their traditional and collective knowledge of their environment (including how to preserve it), and of their world vision attached to it. In addition, the Special Rapporteur notes that insisting that communities relocate outside the reserve for wildlife conservation purposes is at odds with allowing the continuation of mining and tourism activities within the reserve. It is also alleged that local residents in the reserve do not benefit from the exploitation of the mines.

74. After discussions with representatives of the Government, NGOs and San communities, the Special Rapporteur was happy to learn that the Government of Botswana remained willing to engage with the San in the reserve, in particular with regard to community-based natural resource management and tourism in the reserve. However, that requires a minimum of organization at the community level, which would need support to that effect.

IV. Conclusions and recommendations

75. **Botswana must be commended for its efforts and achievements in the area of development and poverty reduction. Important policies geared towards nation-building have been implemented, and efforts to recognize, value and take benefit from the rich cultural diversity of the country have been developed.**

76. **However, many people still feel excluded from the main society and lack recognition of their cultural heritage and distinct ways of life. The Special Rapporteur is concerned in particular about the strong imbalance in recognition and power between Tswana and non-Tswana communities, a system inherited from the colonial past that greatly influences the realization of cultural rights in the country. Botswana needs to engage in a new era of nation-building that fully reflects on, builds upon and celebrates its rich cultural diversity. From a cultural rights-based perspective, this implies equal recognition and acknowledgement of the country's various communities, of the diverse ways in which people relate to their environment and natural resources, as well as their land, and their varied approaches to development.**

77. **Botswana can address those challenges, relying on its strong tradition of consultation, democratic debate and freedom of expression. As stated in Vision 2016, Botswana sees the encouragement of ideas and free thinking as an opportunity for the country to adapt to the modern world with a measure of consensus among its people. The country strives to maintain a delicate balance between customary law and**

[48] See letter from the Permanent Mission of Botswana to the United Nations to the Special Rapporteur on the rights of indigenous peoples, dated 30 July 2013, reference No. GEN/E/15 /VI (47)PR.

[49] Ibid., para. 6.

common law in an effort to preserve its cultural heritage and ensure development, while finding its own path, and should be encouraged in these efforts.

78. **The Government is eager to ensure that everyone and every community feel included in the development process. The Special Rapporteur stresses, however, that while communities are willing to develop economically, they are not always ready to follow the model proposed by the Government. Instead, they seek alternatives that would enable to them to better reconcile economic development and the preservation of their specific ways of life and world vision. The contributions of those communities could strengthen Botswana's approach to development.**

79. **The Government has taken numerous measures to communicate its development policies to the relevant communities. Nonetheless, some communities still have great difficulties in understanding the policies in place and future plans, which gives rise to misunderstandings and suspicion. In many of the places visited, the Special Rapporteur heard the frustration, anger and fears expressed by the people, sometimes in relation to events that took place decades ago. The Special Rapporteur was unable to establish whether those events qualify as human rights violations or not. However, she believes that the Government should acknowledge and address such legacies, clarify the events that took place and listen to the narratives of the various communities with regard to those events. The Government should also facilitate memorialization, and provide the necessary space for those affected to articulate their diverse narratives in culturally meaningful ways, so as to engage in genuine consultations with communities for the future.**

International, constitutional, and organizational framework

80. **Botswana is encouraged to ratify the International Covenant on Economic, Social and Cultural Rights.**

81. **Section 15 of the Constitution of Botswana should be reviewed, in particular, sub-sections 4 (c) and (d) and 9 (a), in order to eliminate exceptions to the principle of non-discrimination that are not in compliance with international human rights treaties.**

82. **The Special Rapporteur welcomes the ongoing efforts towards the establishment of a national human rights institution. All efforts should be made to ensure compliance with the Paris Principles as well as ownership of the institution by the people, through in particular wide consultations as well as the effective and informed participation of non-governmental organizations in the discussions on the final design and establishment of the institution.**

Governance, cultural rights and respect for cultural diversity

83. **While constitutional and legislative reforms have provided for greater participation by historically underrepresented groups in the *Ntlo ya Dikgosi*, the Government should continue working to ensure that those groups are in fact effectively represented in that institution, with due regard to the traditional leadership structures and the practices of all the tribes in Botswana.**

84. **The Special Rapporteur recommends that the State:**

(a) Gather information on mother tongues in the next population census;

(b) Enhance the capacity of the *kgotla* system to take on board marginalized groups and people, such as women and minorities;

(c) Recognize and respect the cultural patterns and traditional leadership structures of non-Tswana communities so as to ensure their participation in decision-making;

(d) Address the complaints made by minority groups such as the Wayeyi about their subordination to other tribes and the obstacles they face in participating equally in decision-making processes at the local and national levels;

(e) Ensure the implementation of the Bogosi Act of 2008 in a transparent manner. Communities applying for recognition as tribes should be kept duly informed of the procedure followed and the steps taken by the Ministry. The Government should also enquire as to why, almost eight years after the adoption of the Bogosi Act, which replaced the discriminatory Chieftainship Act, no further community has been recognized as a "tribe" under that Act, and what consequences this entails in terms of discrimination against minorities.

Linguistic rights and policies, and cultural diversity within the education system

85. Cultural rights, including linguistic rights, should be respected and protected within the education system. Provisions should be made to enable minority groups to learn and be taught in their mother tongue as well as the official State languages. The Government can resort to a wide array of measures to this effect, in practice, based on factors such as demand and the number and location of students from minority groups. Where student numbers are higher, it may be appropriate to provide formal classes in minority languages, while in other cases, more informal approaches may be appropriate, including additional classes and out-of-school teaching options.

86. The Government should also:

(a) Adopt additional measures in the field of education aimed at encouraging the knowledge of the history, culture and traditions of all the tribes and communities in the country;

(b) Enhance the capacity of teachers to develop extracurricular activities in the language of and according to the culture of minority groups;

(c) Enable the establishment of community radio stations in minority languages in various parts of the country.

Tourism, world heritage sites, wild life protection and cultural rights

87. Botswana must be commended for its approach to conservation and development that recognizes the rights of local people to manage and benefit from the management and use of natural resources through community-based natural resource management. The Special Rapporteur encourages the Government to increase efforts in that regard, empower the communities concerned and build their capacity, in particular in the tourism industry.

88. The Special Rapporteur understands the concerns expressed by the Government regarding the need to protect its rich biodiversity and its policy to ensure the economic transition of local communities through their participation in tourism activities. She recommends, however, that the Government fully abide by its obligation to respect and protect cultural rights when tailoring these policies. In particular, the strong cultural dimension of hunting and harvesting practices needs to be acknowledged and thorough consultations and discussions with the communities concerned must be undertaken on these issues. In accordance with article 29 of the Universal Declaration on Human Rights, limitations to cultural rights shall be determined by law solely for the purpose of securing due recognition and respect for

the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society. Any limitations must be proportionate, that is, the least restrictive measures must be taken when several types of limitations may be imposed.

89. **The Government should conduct mass information campaigns, including through proactively engaging with communities, to explain to the peoples of Botswana the legal framework in place regarding land allocation, their rights, procedures to be followed and available options, including when communities have settled on self-allocated land for years.**

90. **Botswana must be congratulated for the steps taken to consult relevant communities in the process leading to the listing of the Okavango Delta as a UNESCO World Heritage Site. The Special Rapporteur notes with satisfaction that the nomination dossier presented by the Government included important information regarding the cultural heritage and user access rights of the San people. She was also happy to receive the Government's assurances that the area would not be fenced off, nor would there be any eviction of local communities, nor disruption of their rights of access to natural resources.**

91. **The Special Rapporteur encourages the Government to continue implementing the UNESCO recommendations for the Okavango Delta, in particular, to reinforce the recognition of the cultural heritage of the local inhabitants, to effectively and clearly communicate all matters concerning the implications of the listing to the affected peoples, to respect and integrate their views into the management, planning and implementation of decisions and to ensure that they have access to benefits derived from tourism. She recommends in particular that:**

(a) Measures be adopted to ensure that conservation of the site will not have a negative impact on local communities and local livelihood opportunities should be developed in line with conservation goals;

(b) Management plans be elaborated and implemented in cooperation with indigenous peoples and local communities and be based on traditional knowledge and skills in site conservation;

(c) The knowledge, innovations and practices of indigenous and local communities in the Okavango Delta be respected, preserved and maintained in accordance with articles 8 (j) and 10 (c) of the Convention on Biological Diversity;

(d) Detailed information be communicated in timely manner to the communities concerned in a language that they clearly understand, including on schedules, persons in charge and long-term goals;

(e) The United Nations Declaration on the Rights of Indigenous Peoples be fully taken into consideration and respected in this process.

92. **The Special Rapporteur recommends that the Government engage with the San of the Central Kalahari Game Reserve, in particular on community-based natural resource management and tourism in the reserve and agreements should fully include respect for the cultural rights of the San people. The Special Rapporteur also recommends that the Government:**

(a) Adopt a less restrictive interpretation of the High Court decision in the *Sesana* case and facilitate the return of all those who were removed from the Central Kalahari Game Reserve who wish to return;

(b) Recognize and implement the right of offspring to remain on the reserve upon attaining majority at 18 years of age.

93. **There is a need for confidence-building measures to improve relationships between communities and the government departments responsible for protecting wildlife and the environment.**

94. **More widely, the Special Rapporteur recommends that the Government take into consideration the strong imbalances in power between the various tribes and communities in the country as well as between communities and business enterprises when engaging in consultations with communities on projects and development programmes. Women should also be fully included in the consultation processes.**

Other

95. **The Special Rapporteur encourages the Government to expand its support to non-traditional forms of cultural expressions and consider the establishment of a national arts council for the promotion and further development of artists and creative industries. This should be considered in the light of the potential role of culture in the needed diversification of the economy.**